

110TH CONGRESS
2D SESSION

S. 2936

To amend title XXI of the Social Security Act to reauthorize the State Children’s Health Insurance Program, to limit income eligibility expansions under that program until the lowest income eligible individuals are enrolled, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 29, 2008

Mrs. DOLE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XXI of the Social Security Act to reauthorize the State Children’s Health Insurance Program, to limit income eligibility expansions under that program until the lowest income eligible individuals are enrolled, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CON-**
4 **TENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Responsible Expansion of the State Children’s Health In-
7 surance Program Act of 2008”.

1 (b) REFERENCES TO SCHIP; SECRETARY.—In this
2 Act:

3 (1) SCHIP.—The term “SCHIP” means the
4 State Children’s Health Insurance Program estab-
5 lished under title XXI of the Social Security Act (42
6 U.S.C. 1397aa et seq.).

7 (2) SECRETARY.—The term “Secretary” means
8 the Secretary of Health and Human Services.

9 (c) TABLE OF CONTENTS.—The table of contents of
10 this Act is as follows:

Sec. 1. Short title; amendments to Social Security Act; references; table of con-
tents.

TITLE I—SCHIP REAUTHORIZATION

Sec. 101. Reauthorization through fiscal year 2013.

Sec. 102. Requiring outreach and coverage before expansion of eligibility.

Sec. 103. Application of DRA Medicaid citizenship documentation requirements
to SCHIP.

Sec. 104. Phase-out of coverage for nonpregnant adults under SCHIP.

Sec. 105. Preventing substitution of SCHIP coverage for private coverage.

TITLE II—REVENUE PROVISIONS

Sec. 201. Nonqualified deferred compensation from certain tax indifferent par-
ties.

Sec. 202. Income of partners for performing investment management services
treated as ordinary income received for performance of serv-
ices.

11 TITLE I—SCHIP 12 REAUTHORIZATION

13 SEC. 101. REAUTHORIZATION THROUGH FISCAL YEAR 2013.

14 (a) IN GENERAL.—Section 2104 of the Social Secu-
15 rity Act (42 U.S.C. 1397dd(a)), as amended by section
16 201(a)(1) of the Medicare, Medicaid, and SCHIP Exten-
17 sion Act of 2007 (Public Law 110–173) is amended—

1 (1) in subsection (a)—

2 (A) by striking “and” at the end of para-
3 graph (10);

4 (B) in paragraph (11)—

5 (i) by striking “each of fiscal years
6 2008 and 2009” and inserting “fiscal year
7 2008”; and

8 (ii) by striking the period at the end
9 and inserting a semicolon; and

10 (C) by adding at the end the following new
11 paragraphs:

12 “(12) for fiscal year 2009, \$7,000,000,000;

13 “(13) for fiscal year 2010, \$8,000,000,000; and

14 “(14) for each of fiscal years 2011 through
15 2013, \$9,000,000,000.”; and

16 (2) in subsection (c)(4)(B), by striking “2009”
17 and inserting “2013”.

18 (b) REPEAL OF LIMITATION ON AVAILABILITY OF
19 FUNDING FOR FISCAL YEARS 2008 AND 2009.—Section
20 201 of the Medicare, Medicaid, and SCHIP Extension Act
21 of 2007 (Public Law 110–173) is amended—

22 (1) in subsection (a), by striking paragraph (2)
23 and redesignating paragraphs (3) and (4), as para-
24 graphs (2) and (3) respectively; and

1 (2) in subsection (b), by striking paragraph (2)
 2 and redesignating paragraph (3) as paragraph (2).

3 **SEC. 102. REQUIRING OUTREACH AND COVERAGE BEFORE**
 4 **EXPANSION OF ELIGIBILITY.**

5 (a) STATE PLAN REQUIRED TO SPECIFY HOW IT
 6 WILL ACHIEVE COVERAGE FOR 85 PERCENT OF TAR-
 7 GETED LOW-INCOME CHILDREN.—

8 (1) IN GENERAL.—Section 2102(a) of the So-
 9 cial Security Act (42 U.S.C. 1397bb(a)) is amend-
 10 ed—

11 (A) in paragraph (6), by striking “and” at
 12 the end;

13 (B) in paragraph (7), by striking the pe-
 14 riod at the end and inserting “; and”; and

15 (C) by adding at the end the following new
 16 paragraph:

17 “(8) how the eligibility and benefits provided
 18 for under the plan for each fiscal year (beginning
 19 with fiscal year 2009) will allow for the State’s an-
 20 nual funding allotment to cover at least 85 percent
 21 of the eligible targeted low-income children in the
 22 State.”.

23 (2) EFFECTIVE DATE.—The amendments made
 24 by paragraph (1) shall apply to State child health

1 plans for fiscal years beginning with fiscal year
2 2009.

3 (b) LIMITATION ON PROGRAM EXPANSIONS UNTIL
4 LOWEST INCOME ELIGIBLE INDIVIDUALS ENROLLED.—
5 Section 2105(c) of such Act (42 U.S.C. 1397dd(c)) is
6 amended by adding at the end the following new para-
7 graph:

8 “(8) LIMITATION ON INCREASED COVERAGE OF
9 HIGHER INCOME CHILDREN.—For child health as-
10 sistance furnished in any fiscal year beginning with
11 fiscal year 2009:

12 “(A) NO PAYMENT FOR CHILDREN WITH
13 FAMILY INCOME ABOVE 300 PERCENT OF POV-
14 ERTY LINE.—Payment shall not be made under
15 this section for child health assistance for a tar-
16 geted low-income child in a family the income
17 of which exceeds 300 percent of the poverty line
18 applicable to a family of the size involved.

19 “(B) SPECIAL RULES FOR PAYMENT FOR
20 CHILDREN WITH FAMILY INCOME ABOVE 200
21 PERCENT OF POVERTY LINE.—In the case of
22 child health assistance for a targeted low-in-
23 come child in a family the income of which ex-
24 ceeds 200 percent (but does not exceed 300
25 percent) of the poverty line applicable to a fam-

ily of the size involved no payment shall be made under this section for such assistance unless the State demonstrates to the satisfaction of the Secretary that—

“(i) the State has met the 85 percent retrospective coverage test specified in subparagraph (C)(i) for the previous fiscal year; and

“(ii) the State will meet the 85 percent prospective coverage test specified in subparagraph (C)(ii) for the fiscal year.

“(C) 85 PERCENT COVERAGE TESTS.—

“(i) RETROSPECTIVE TEST.—The 85 percent retrospective coverage test specified in this clause is, for a State for a fiscal year, that on average during the fiscal year, the State has enrolled under this title or title XIX at least 85 percent of the individuals residing in the State who—

“(I) are children under 19 years of age (or are pregnant women) and are eligible for medical assistance under title XIX; or

“(II) are targeted low-income children whose family income does not

1 exceed 200 percent of the poverty line
 2 and who are eligible for child health
 3 assistance under this title.

4 “(ii) PROSPECTIVE TEST.—The 85
 5 percent prospective test specified in this
 6 clause is, for a State for a fiscal year, that
 7 on average during the fiscal year, the State
 8 will enroll under this title or title XIX at
 9 least 85 percent of the individuals residing
 10 in the State who—

11 “(I) are children under 19 years
 12 of age (or are pregnant women) and
 13 are eligible for medical assistance
 14 under title XIX; or

15 “(II) are targeted low-income
 16 children whose family income does not
 17 exceed such percent of the poverty
 18 line (in excess of 200 percent) as the
 19 State elects consistent with this para-
 20 graph and who are eligible for child
 21 health assistance under this title.

22 “(D) PHASE-IN REQUIREMENT FOR EX-
 23 PANDED COVERAGE IF 85 PERCENT TESTS MET
 24 FOR LOW-INCOME COVERAGE.—With respect to
 25 a fiscal year, if a State meets both of the cov-

erage tests specified in clauses (i) and (ii) of subparagraph (C) for such year—

“(i) payment may be made to the State under this section for child health assistance for a targeted low-income child in a family the income of which exceeds 200 percent, but does not exceed 250 percent poverty line applicable to a family of the size involved; and

“(ii) payment may be made to the State under this section child health assistance for a targeted low-income child in a family the income of which 250 percent, but does not exceed 300 percent of the poverty line applicable to a family of the size involved only if the State can also meet the retrospective test applied under clause (i) of subparagraph (C) for the previous fiscal year by substituting ‘250’ for ‘200’ in subclause (II) of such clause.

“(E) TREATMENT OF PREGNANT WOMEN.—In this paragraph and sections 2102(a)(8) and 2104(a)(2), the term ‘targeted low-income child’ includes an individual under age 19, including the period from conception to

1 birth, who is eligible for child health assistance
 2 under this title by virtue of the definition of the
 3 term ‘child’ under section 457.10 of title 42,
 4 Code of Federal Regulations.”.

5 (c) STANDARDIZATION OF INCOME DETERMINA-
 6 TIONS.—

7 (1) IN GENERAL.—Section 2110(d) of such Act
 8 (42 U.S.C. 1397jj) is amended by adding at the end
 9 the following new subsection:

10 “(d) STANDARDIZATION OF INCOME DETERMINA-
 11 TIONS.—In determining family income under this title (in-
 12 cluding in the case of a State child health plan that pro-
 13 vides health benefits coverage in the manner described in
 14 section 2101(a)(2)), a State shall base such determination
 15 on gross income (including amounts that would be in-
 16 cluded in gross income if they were not exempt from in-
 17 come taxation) and may only take into consideration such
 18 income disregards as the Secretary shall develop and
 19 specify on a uniform national basis.”.

20 (2) EFFECTIVE DATE.—(A) Subject to subpara-
 21 graph (B), the amendment made by paragraph (1)
 22 shall apply to determinations (and redeterminations)
 23 of income made on or after October 1, 2008.

24 (B) In the case of a State child health plan
 25 under title XXI of the Social Security Act which the

1 Secretary of Health and Human Services determines
 2 requires State legislation (other than legislation ap-
 3 propriating funds) in order for the plan to meet the
 4 additional requirement imposed by the amendment
 5 made by paragraph (1), the State child health plan
 6 shall not be regarded as failing to comply with the
 7 requirements of such title solely on the basis of its
 8 failure to meet this additional requirement before
 9 the first day of the first calendar quarter beginning
 10 after the close of the first regular session of the
 11 State legislature that begins after the date of the en-
 12 actment of this Act. For purposes of the previous
 13 sentence, in the case of a State that has a 2-year
 14 legislative session, each year of such session shall be
 15 deemed to be a separate regular session of the State
 16 legislature.

17 **SEC. 103. APPLICATION OF DRA MEDICAID CITIZENSHIP**
 18 **DOCUMENTATION REQUIREMENTS TO SCHIP.**

19 (a) IN GENERAL.—Section 2105(c) of the Social Se-
 20 curity Act (42 U.S.C. 1397dd(c)), as amended by section
 21 102(b), is amended by adding at the end the following new
 22 paragraph:

23 “(9) APPLICATION OF CITIZENSHIP DOCU-
 24 MENTATION REQUIREMENTS.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), no payment may be made under this
3 section to a State with respect to amounts ex-
4 pended for child health assistance for an indi-
5 vidual who declares under section
6 1137(d)(1)(A) to be a citizen or national of the
7 United States for purposes of establishing eligi-
8 bility for benefits under this title, unless the re-
9 quirement of section 1903(x) is met.

10 “(B) TREATMENT OF PREGNANT
11 WOMEN.—For purposes of applying subpara-
12 graph (A) in the case of a pregnant woman who
13 qualifies for child health assistance by virtue of
14 the application of section 457.10 of title 42,
15 Code of Federal Regulations, the requirement
16 of section 1903(x) shall be deemed to be satis-
17 fied by the presentation of documentation of
18 personal identity described in section
19 274A(b)(1)(D) of the Immigration and Nation-
20 ality Act or any other documentation of per-
21 sonal identity of such other type as the Sec-
22 retary finds, by regulation, provides a reliable
23 means of identification.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 paragraph (1) shall apply to eligibility determinations and

1 redeterminations made after the date of enactment of this
2 Act.

3 **SEC. 104. PHASE-OUT OF COVERAGE FOR NONPREGNANT**
4 **ADULTS UNDER SCHIP.**

5 (a) IN GENERAL.—Title XXI of the Social Security
6 Act (42 U.S.C. 1397aa et seq.) is amended by adding at
7 the end the following new section:

8 **“SEC. 2111. PHASE-OUT OF COVERAGE FOR NONPREGNANT**
9 **ADULTS.**

10 “(a) TERMINATION OF COVERAGE FOR NONPREG-
11 NANT ADULTS.—

12 “(1) NO NEW SCHIP WAIVERS; AUTOMATIC EX-
13 TENSIONS AT STATE OPTION THROUGH DECEMBER
14 2008.—Notwithstanding section 1115 or any other
15 provision of this title, except as provided in this sub-
16 section—

17 “(A) the Secretary shall not on or after the
18 date of the enactment of the Responsible Ex-
19 pansion of the State Children’s Health Insur-
20 ance Program Act of 2008, approve or renew a
21 waiver, experimental, pilot, or demonstration
22 project that would allow funds made available
23 under this title to be used to provide child
24 health assistance or other health benefits cov-
25 erage to a nonpregnant adult; and

1 “(B) notwithstanding the terms and condi-
 2 tions of an applicable existing waiver, the provi-
 3 sions of paragraph (2) shall apply for purposes
 4 of any period beginning on or after January 1,
 5 2009, in determining the period to which the
 6 waiver applies, the individuals eligible to be cov-
 7 ered by the waiver, and the amount of the Fed-
 8 eral payment under this title.

9 “(2) TERMINATION OF SCHIP COVERAGE
 10 UNDER APPLICABLE EXISTING WAIVERS AT THE
 11 END OF 2008.—

12 “(A) IN GENERAL.—No funds shall be
 13 available under this title for child health assist-
 14 ance or other health benefits coverage that is
 15 provided to a nonpregnant adult under an ap-
 16 plicable existing waiver after December 31,
 17 2008.

18 “(B) EXTENSION UPON STATE RE-
 19 QUEST.—If an applicable existing waiver de-
 20 scribed in subparagraph (A) would otherwise
 21 expire before January 1, 2009, and the State
 22 requests an extension of such waiver, the Sec-
 23 retary shall grant such an extension, but only
 24 through December 31, 2008.

1 “(C) APPLICATION OF ENHANCED FMAP.—

2 The enhanced FMAP determined under section
 3 2105(b) shall apply to expenditures under an
 4 applicable existing waiver for the provision of
 5 child health assistance or other health benefits
 6 coverage to a nonpregnant childless adult dur-
 7 ing the period beginning on the date of the en-
 8 actment of this subsection and ending on De-
 9 cember 31, 2008.

10 “(b) APPLICABLE EXISTING WAIVER.—For purposes
 11 of this section—

12 “(1) IN GENERAL.—The term ‘applicable exist-
 13 ing waiver’ means a waiver, experimental, pilot, or
 14 demonstration project under section 1115, grand-
 15 fathered under section 6102(c)(3) of the Deficit Re-
 16 duction Act of 2005, or otherwise conducted under
 17 authority that—

18 “(A) would allow funds made available
 19 under this title to be used to provide child
 20 health assistance or other health benefits cov-
 21 erage to—

22 “(i) a parent of a targeted low-income
 23 child;

24 “(ii) a nonpregnant childless adult; or

1 “(iii) individuals described in both
2 clauses (i) and (ii); and

3 “(B) was in effect on October 1, 2007.

4 “(2) DEFINITIONS.—The term ‘nonpregnant
5 adult’ means any individual who is not a targeted
6 low-income pregnant woman (as defined in section
7 2112(d)(2)) or a targeted low-income child.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 2107(f) of such Act (42 U.S.C.
10 1397gg(f)) is amended—

11 (A) by striking “, the Secretary” and in-
12 serting “:

13 “(1) The Secretary”;

14 (B) in the first sentence, by striking
15 “childless”;

16 (C) by striking the second sentence; and

17 (D) by adding at the end the following new
18 paragraph:

19 “(2) The Secretary may not approve, extend,
20 renew, or amend a waiver, experimental, pilot, or
21 demonstration project with respect to a State after
22 the date of enactment of the Responsible Expansion
23 of the State Children’s Health Insurance Program
24 Act of 2008 that would waive or modify the require-
25 ments of section 2111.”.

(2) Section 6102(c) of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 131) is amended by striking “Nothing” and inserting “Subject to section 2111 of the Social Security Act, as added by section 104 of the Responsible Expansion of the State Children’s Health Insurance Program Act of 2008, nothing”.

SEC. 105. PREVENTING SUBSTITUTION OF SCHIP COVERAGE FOR PRIVATE COVERAGE.

(a) FINDINGS.—

(1) Congress agrees with the President that low-income children should be the first priority of all States in providing child health assistance under SCHIP.

(2) Congress agrees with the President and the Congressional Budget Office that the substitution of SCHIP coverage for private coverage occurs more frequently for children in families at higher income levels.

(3) Congress agrees with the President that it is appropriate that States that expand SCHIP eligibility to children at higher income levels should have achieved a high level of health benefits coverage for low-income children and should implement strategies to address such substitution.

1 (4) Congress concludes that the policies speci-
2 fied in this section (and the amendments made by
3 this section) are the appropriate policies to address
4 these issues.

5 (b) ANALYSES OF BEST PRACTICES AND METHOD-
6 LOGY IN ADDRESSING CROWD-OUT.—

7 (1) GAO REPORT.—Not later than 18 months
8 after the date of the enactment of this Act, the
9 Comptroller General of the United States shall sub-
10 mit to the Committee on Finance of the Senate and
11 the Committee on Energy and Commerce of the
12 House of Representatives and the Secretary a report
13 describing the best practices by States in addressing
14 the issue of SCHIP crowd-out. Such report shall in-
15 clude—

16 (A) analyses of—

17 (i) the impact of different geographic
18 areas, including urban and rural areas, on
19 SCHIP crowd-out;

20 (ii) the impact of different State labor
21 markets on SCHIP crowd-out;

22 (iii) the impact of different strategies
23 for addressing SCHIP crowd-out;

1 (iv) the incidence of crowd-out for
 2 children with different levels of family in-
 3 come; and

4 (v) the relationship (if any) between
 5 changes in the availability and affordability
 6 of dependent coverage under employer-
 7 sponsored health insurance and SCHIP
 8 crowd-out; and

9 (B) recommendations for such legislative
 10 changes as the Comptroller General determines
 11 are likely to most effective for addressing the
 12 issue of SCHIP crowd-out, together with pro-
 13 posed legislative language.

14 (2) IOM REPORT ON METHODOLOGY.—The
 15 Secretary shall enter into an arrangement with the
 16 Institute of Medicine under which the Institute sub-
 17 mits to the Committee on Finance of the Senate and
 18 the Committee on Energy and Commerce of the
 19 House of Representatives and the Secretary, not
 20 later than 18 months after the date of the enact-
 21 ment of this Act, a report on—

22 (A) the most accurate, reliable, and timely
 23 way to measure—

24 (i) on a State-by-State basis, the rate
 25 of public and private health benefits cov-

erage among low-income children with family income that does not exceed 200 percent of the poverty line; and

(ii) SCHIP crowd-out, including in the case of children with family income that exceeds 200 percent of the poverty line; and

(B) the least burdensome way to gather the necessary data to conduct the measurements described in subparagraph (A).

Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated \$2,000,000 to carry out this paragraph for the period ending September 30, 2009.

(3) INCORPORATION OF DEFINITIONS.—In this section, the terms “SCHIP crowd-out”, “children”, “poverty line”, and “State” have the meanings given such terms for purposes of SCHIP.

(4) DEFINITION OF SCHIP CROWD-OUT.—Section 2110(c) of the Social Security Act (42 U.S.C. 1397jj(c)) is amended by adding at the end the following:

“(9) SCHIP CROWD-OUT.—The term ‘SCHIP crowd-out’ means the substitution of—

1 “(A) health benefits coverage for a child
2 under this title, for

3 “(B) health benefits coverage for the child
4 other than under this title or title XIX.”.

5 (c) DEVELOPMENT OF BEST PRACTICE REC-
6 OMMENDATIONS.—Section 2107 of such Act (42 U.S.C.
7 1397gg) is amended by adding at the end the following:

8 “(g) DEVELOPMENT OF BEST PRACTICE REC-
9 OMMENDATIONS.—Within 6 months after the date of re-
10 ceipt of the reports under subsections (a) and (b) of sec-
11 tion 105 of the Responsible Expansion of the State Chil-
12 dren’s Health Insurance Program Act of 2008, the Sec-
13 retary, in consultation with States, including Medicaid and
14 SCHIP directors in States, shall publish in the Federal
15 Register, and post on the public website for the Depart-
16 ment of Health and Human Services—

17 “(1) recommendations regarding best practices
18 for States to use to address SCHIP crowd-out; and

19 “(2) uniform standards for data collection by
20 States to measure and report—

21 “(A) health benefits coverage for children
22 with family income below 200 percent of the
23 poverty line; and

1 “(B) on SCHIP crowd-out, including for
 2 children with family income that exceeds 200
 3 percent of the poverty line.

4 The Secretary, in consultation with States, including Med-
 5 icaid and SCHIP directors in States, may from time to
 6 time update the best practice recommendations and uni-
 7 form standards set published under paragraphs (1) and
 8 (2) and shall provide for publication and posting of such
 9 updated recommendations and standards.”.

10 (d) REQUIREMENT TO ADDRESS SCHIP CROWD-
 11 OUT; SECRETARIAL REVIEW.—Section 2106 of such Act
 12 (42 U.S.C. 1397ff) is amended by adding at the end the
 13 following:

14 “(f) REQUIREMENT TO ADDRESS SCHIP CROWD-
 15 OUT; SECRETARIAL REVIEW.—

16 “(1) IN GENERAL.—Not later than 6 months
 17 after the best practice application date described in
 18 paragraph (2), each State that has a State child
 19 health plan shall submit to the Secretary a State
 20 plan amendment describing how the State—

21 “(A) will address SCHIP crowd-out; and

22 “(B) will incorporate recommended best
 23 practices referred to in such paragraph.

24 “(2) BEST PRACTICE APPLICATION DATE.—The
 25 best practice application date described in this para-

graph is the date that is 6 months after the date of publication of recommendations regarding best practices under section 2107(g)(1).

“(3) SECRETARIAL REVIEW.—The Secretary shall—

“(A) review each State plan amendment submitted under paragraph (1);

“(B) determine whether the amendment incorporates recommended best practices referred to in paragraph (2);

“(C) in the case of a higher income eligibility State (as defined in section 2105(c)(10)(B)), determine whether the State meets the enrollment targets required under reference section 2105(c)(10)(C); and

“(D) notify the State of such determinations.”.

(e) LIMITATION ON PAYMENTS FOR STATES COVERING HIGHER INCOME CHILDREN.—

(1) IN GENERAL.—Section 2105(c) of such Act (42 U.S.C. 1397ee(c)), as amended by sections 102(b) and 103(a), is amended by adding at the end the following new paragraph:

“(10) LIMITATION ON PAYMENTS FOR STATES COVERING HIGHER INCOME CHILDREN.—

1 “(A) DETERMINATIONS.—

2 “(i) IN GENERAL.—The Secretary
3 shall determine within 6 months of the
4 date of the submission of a State plan
5 amendment to provide child health assist-
6 ance to higher income children (or, in the
7 case of any State that is a higher income
8 eligibility State on the date of enactment
9 of this paragraph, within 6 months of such
10 date of enactment), whether the State
11 meets the target rate of coverage of low-in-
12 come children required under subpara-
13 graphs (C) and (D) of paragraph (8) and
14 shall notify the State of such determina-
15 tion.

16 “(ii) DETERMINATION OF FAILURE.—

17 If the Secretary determines that a State
18 does not meet such target rate of coverage,
19 no payment shall be made under this sec-
20 tion for child health assistance provided for
21 higher-income children (as defined in sub-
22 paragraph (C)) under the State child
23 health plan (beginning, in the case of any
24 State that is determined to be a higher in-
25 come eligibility State within of the date of

enactment of this paragraph, on January 1, 2009) unless and until the State establishes it is in compliance with such requirement.

“(B) HIGHER INCOME ELIGIBILITY STATE.—A higher income eligibility State described in this clause is a State that—

“(i) applies under its State child health plan an eligibility income standard for targeted low-income children that exceeds 200 percent of the poverty line; or

“(ii) because of the application of a general exclusion of a block of income that is not determined by type of expense or type of income, applies an effective income standard under the State child health plan for such children that exceeds 200 percent of the poverty line.

“(C) HIGHER-INCOME CHILD.—For purposes of this paragraph, the term ‘higher income child’ means, with respect to a State child health plan, a targeted low-income child whose family income—

“(i) exceeds 200 percent of the poverty line; or

1 “(ii) would exceed 200 percent of the
2 poverty line if there were not taken into
3 account any general exclusion described in
4 subparagraph (B)(ii).

5 “(D) NOTICE AND OPPORTUNITY TO COM-
6 PLY WITH TARGET RATE.—If the Secretary
7 makes a determination that a State does not
8 meet the target rate of coverage of low-income
9 children required under subparagraphs (C) and
10 (D) of paragraph (8), the Secretary—

11 “(i) shall provide the State with the
12 opportunity to submit and implement a
13 corrective action plan for the State to come
14 into compliance with the requirement of
15 subparagraphs (C) and (D) of paragraph
16 (8) before October 1 of any year; and

17 “(ii) shall not effect a denial of pay-
18 ment under subparagraph (A) on the basis
19 of a determination that a State has not
20 come into compliance with such require-
21 ment before December 31 of such year.”.

22 (2) CONSTRUCTION.—Nothing in the amend-
23 ment made by paragraph (1) or this section this
24 shall be construed as authorizing the Secretary of
25 Health and Human Services to limit payments

1 under title XXI of the Social Security Act in the
 2 case of a State that is not a higher income eligibility
 3 State (as defined in section 2105(c)(10)(B) of such
 4 Act, as added by paragraph (1)).

5 (f) TREATMENT OF MEDICAL SUPPORT ORDERS.—
 6 Section 2102(b) of such Act (42 U.S.C. 1397bb(c)) is
 7 amended by adding at the end the following:

8 “(5) TREATMENT OF MEDICAL SUPPORT OR-
 9 DERS.—

10 “(A) IN GENERAL.—Nothing in this title
 11 shall be construed to allow the Secretary to re-
 12 quire that a State deny eligibility for child
 13 health assistance to a child who is otherwise eli-
 14 gible on the basis of the existence of a valid
 15 medical support order being in effect.

16 “(B) STATE ELECTION.—A State may
 17 elect to limit eligibility for child health assist-
 18 ance to a targeted low-income child on the basis
 19 of the existence of a valid medical support order
 20 on the child’s behalf, but only if the State does
 21 not deny such eligibility for a child on such
 22 basis if the child asserts that the order is not
 23 being complied with for any of the reasons de-
 24 scribed in subparagraph (C) unless the State

1 demonstrates that none of such reasons applies
 2 in the case involved.

3 “(C) REASONS FOR NONCOMPLIANCE.—

4 The reasons described in this subparagraph for
 5 noncompliance with a medical support order
 6 with respect to a child are that the child is not
 7 being provided health benefits coverage pursu-
 8 ant to such order because—

9 “(i) of failure of the noncustodial par-
 10 ent to comply with the order;

11 “(ii) of the failure of an employer,
 12 group health plan or health insurance
 13 issuer to comply with such order; or

14 “(iii) the child resides in a geographic
 15 area in which benefits under the health
 16 benefits coverage are generally unavail-
 17 able.”.

18 (g) EFFECTIVE DATE OF AMENDMENTS; CONSIST-
 19 ENCY OF POLICIES.—The amendments made by this sec-
 20 tion shall take effect as if enacted on August 16, 2007.
 21 The Secretary may not impose (or continue in effect) any
 22 requirement, prevent the implementation of any provision,
 23 or condition the approval of any provision under any State
 24 child health plan, State plan amendment, or waiver re-
 25 quest on the basis of any policy or interpretation relating

1 to SCHIP crowd-out, coordination with other sources of
 2 coverage, target rate of coverage, or medical support order
 3 other than under the amendments made by this section.
 4 In the case of a State plan amendment which was denied
 5 on or after August 16, 2007, on the basis of any such
 6 policy or interpretation in effect before the date of the en-
 7 actment of this Act, if the State submits a modification
 8 of such State plan amendment that complies with title
 9 XXI of the Social Security Act as amended by this Act,
 10 such submitted State plan amendment, as so modified,
 11 shall be considered as if it had been submitted (as so modi-
 12 fied) as of the date of its original submission, but such
 13 State plan amendment shall not be effective before the
 14 date of the enactment of this Act.

15 **TITLE II—REVENUE PROVISIONS**

16 **SEC. 201. NONQUALIFIED DEFERRED COMPENSATION** 17 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

18 (a) IN GENERAL.—Subpart B of part II of sub-
 19 chapter E of chapter 1 of the Internal Revenue Code of
 20 1986 (relating to taxable year for which items of gross
 21 income included) is amended by inserting after section 457
 22 the following new section:

1 **“SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION**
 2 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

3 “(a) IN GENERAL.—Any compensation which is de-
 4 ferred under a nonqualified deferred compensation plan of
 5 a nonqualified entity shall be taken into account for pur-
 6 poses of this chapter when there is no substantial risk of
 7 forfeiture of the rights to such compensation.

8 “(b) NONQUALIFIED ENTITY.—For purposes of this
 9 section, the term ‘nonqualified entity’ means—

10 “(1) any foreign corporation unless substan-
 11 tially all of such income is—

12 “(A) effectively connected with the conduct
 13 of a trade or business in the United States, or

14 “(B) subject to a comprehensive foreign in-
 15 come tax, and

16 “(2) any partnership unless substantially all of
 17 such income is allocated to persons other than—

18 “(A) foreign persons with respect to whom
 19 such income is not subject to a comprehensive
 20 foreign income tax, and

21 “(B) organizations which are exempt from
 22 tax under this title.

23 “(c) ASCERTAINABILITY OF AMOUNTS OF COM-
 24 PENSATION.—

25 “(1) IN GENERAL.—If the amount of any com-
 26 pensation is not ascertainable at the time that such

1 compensation is otherwise to be taken into account
 2 under subsection (a)—

3 “(A) such amount shall be so taken into
 4 account when ascertainable, and

5 “(B) the tax imposed under this chapter
 6 for the taxable year in which such compensation
 7 is taken into account under subparagraph (A)
 8 shall be increased by the sum of—

9 “(i) the amount of interest determined
 10 under paragraph (2), and

11 “(ii) an amount equal to 20 percent of
 12 the amount of such compensation.

13 “(2) INTEREST.—For purposes of paragraph
 14 (1)(B)(i), the interest determined under this para-
 15 graph for any taxable year is the amount of interest
 16 at the underpayment rate under section 6621 plus
 17 1 percentage point on the underpayments that would
 18 have occurred had the deferred compensation been
 19 includible in gross income for the taxable year in
 20 which first deferred or, if later, the first taxable year
 21 in which such deferred compensation is not subject
 22 to a substantial risk of forfeiture.

23 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—
 24 For purposes of this section—

25 “(1) SUBSTANTIAL RISK OF FORFEITURE.—

1 “(A) IN GENERAL.—The rights of a person
 2 to compensation shall be treated as subject to
 3 a substantial risk of forfeiture only if such per-
 4 son’s rights to such compensation are condi-
 5 tioned upon the future performance of substan-
 6 tial services by any individual.

7 “(B) EXCEPTION FOR COMPENSATION
 8 BASED ON GAIN RECOGNIZED ON AN INVEST-
 9 MENT ASSET.—

10 “(i) IN GENERAL.—To the extent pro-
 11 vided in regulations prescribed by the Sec-
 12 retary, if compensation is determined solely
 13 by reference to the amount of gain recog-
 14 nized on the disposition of an investment
 15 asset, such compensation shall be treated
 16 as subject to a substantial risk of for-
 17 feiture until the date of such disposition.

18 “(ii) INVESTMENT ASSET.—For pur-
 19 poses of clause (i), the term ‘investment
 20 asset’ means any single asset (other than
 21 an investment fund or similar entity)—

22 “(I) acquired directly by an in-
 23 vestment fund or similar entity,

24 “(II) with respect to which such
 25 entity does not (nor does any person

1 related to such entity) participate in
 2 the active management of such asset
 3 (or if such asset is an interest in an
 4 entity, in the active management of
 5 the activities of such entity), and

6 “(III) substantially all of any
 7 gain on the disposition of which (other
 8 than such deferred compensation) is
 9 allocated to investors in such entity.

10 “(iii) COORDINATION WITH SPECIAL
 11 RULE FOR SHORT-TERM DEFERRALS OF
 12 COMPENSATION.—Paragraph (3)(B) shall
 13 not apply to any compensation to which
 14 clause (i) applies.

15 “(2) COMPREHENSIVE FOREIGN INCOME TAX.—
 16 The term ‘comprehensive foreign income tax’ means,
 17 with respect to any foreign person, the income tax
 18 of a foreign country if—

19 “(A) such person is eligible for the benefits
 20 of a comprehensive income tax treaty between
 21 such foreign country and the United States, or

22 “(B) such person demonstrates to the sat-
 23 isfaction of the Secretary that such foreign
 24 country has a comprehensive income tax.

1 Such term shall not include any tax unless such tax
 2 includes rules for the deductibility of deferred com-
 3 pensation which are similar to the rules of this title.

4 “(3) NONQUALIFIED DEFERRED COMPENSA-
 5 TION PLAN.—

6 “(A) IN GENERAL.—The term ‘non-
 7 qualified deferred compensation plan’ has the
 8 meaning given such term under section
 9 409A(d), except that such term shall include
 10 any plan that provides a right to compensation
 11 based on the appreciation in value of a specified
 12 number of equity units of the service recipient.

13 “(B) EXCEPTION FOR SHORT-TERM DE-
 14 FERRALS.—Compensation shall not be treated
 15 as deferred for purposes of this section if the
 16 service provider receives payment of such com-
 17 pensation not later than 12 months after the
 18 end of the taxable year of the service recipient
 19 during which the right to the payment of such
 20 compensation is no longer subject to a substan-
 21 tial risk of forfeiture.

22 “(4) EXCEPTION FOR CERTAIN COMPENSATION
 23 WITH RESPECT TO EFFECTIVELY CONNECTED IN-
 24 COME.—In the case a foreign corporation with in-
 25 come which is taxable under section 882, this section

1 shall not apply to compensation which, had such
 2 compensation had been paid in cash on the date that
 3 such compensation ceased to be subject to a sub-
 4 stantial risk of forfeiture, would have been deduct-
 5 ible by such foreign corporation against such income.

6 “(5) APPLICATION OF RULES.—Rules similar to
 7 the rules of paragraphs (5) and (6) of section
 8 409A(d) shall apply.

9 “(e) REGULATIONS.—The Secretary shall prescribe
 10 such regulations as may be necessary or appropriate to
 11 carry out the purposes of this section, including regula-
 12 tions disregarding a substantial risk of forfeiture in cases
 13 where necessary to carry out the purposes of this sec-
 14 tion.”.

15 (b) CONFORMING AMENDMENT.—Section 26(b)(2) of
 16 such Code is amended by striking “and” at the end of
 17 subparagraph (U), by striking the period at the end of
 18 subparagraph (V) and inserting “, and”, and by adding
 19 at the end the following new subparagraph:

20 “(W) section 457A(c)(1)(B) (relating to
 21 ascertainability of amounts of compensation).”.

22 (c) CLERICAL AMENDMENT.—The table of sections
 23 of subpart B of part II of subchapter E of chapter 1 of
 24 such Code is amended by inserting after the item relating
 25 to section 457 the following new item:

“Sec. 457A. Nonqualified deferred compensation from certain tax indifferent parties.”.

1 (d) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as otherwise pro-
3 vided in this subsection, the amendments made by
4 this section shall apply to amounts deferred which
5 are attributable to services performed after the date
6 of enactment of this Act.

7 (2) APPLICATION TO EXISTING DEFERRALS.—

8 In the case of any amount deferred to which the
9 amendments made by this section do not apply solely
10 by reason of the fact that the amount is attributable
11 to services performed before the date of enactment
12 of this Act, to the extent such amount is not includ-
13 ible in gross income in a taxable year beginning be-
14 fore 2017, such amounts shall be includible in gross
15 income in the later of—

16 (A) the last taxable year beginning before
17 2017, or

18 (B) the taxable year in which there is no
19 substantial risk of forfeiture of the rights to
20 such compensation (determined in the same
21 manner as determined for purposes of section
22 457A of the Internal Revenue Code of 1986, as
23 added by this section).

1 (3) ACCELERATED PAYMENTS.—No later than
2 60 days after the date of the enactment of this Act,
3 the Secretary shall issue guidance providing a lim-
4 ited period of time during which a nonqualified de-
5 ferred compensation arrangement attributable to
6 services performed on or before the date of enact-
7 ment of this Act, may, without violating the require-
8 ments of section 409A(a) of the Internal Revenue
9 Code of 1986, be amended to conform the date of
10 distribution to the date the amounts are required to
11 be included in income.

12 (4) CERTAIN BACK-TO-BACK ARRANGEMENTS.—
13 If the taxpayer is also a service recipient and main-
14 tains one or more nonqualified deferred compensa-
15 tion arrangements for its service providers under
16 which any amount is attributable to services per-
17 formed on or before the date of the enactment of
18 this Act, the guidance issued under paragraph (3)
19 shall permit such arrangements to be amended to
20 conform the dates of distribution under such ar-
21 rangement to the date amounts are required to be
22 included in the income of such taxpayer under this
23 subsection.

24 (5) ACCELERATED PAYMENT NOT TREATED AS
25 MATERIAL MODIFICATION.—Any amendment to a

1 nonqualified deferred compensation arrangement
 2 made pursuant to paragraph (3) or (4) shall not be
 3 treated as a material modification of the arrange-
 4 ment for purposes of section 409A of the Internal
 5 Revenue Code of 1986.

6 **SEC. 202. INCOME OF PARTNERS FOR PERFORMING IN-**
 7 **VESTMENT MANAGEMENT SERVICES TREAT-**
 8 **ED AS ORDINARY INCOME RECEIVED FOR**
 9 **PERFORMANCE OF SERVICES.**

10 (a) IN GENERAL.—Part I of subchapter K of chapter
 11 1 of the Internal Revenue Code of 1986 is amended by
 12 adding at the end the following new section:

13 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
 14 **VESTMENT MANAGEMENT SERVICES TO**
 15 **PARTNERSHIP.**

16 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF
 17 PARTNERSHIP ITEMS.—For purposes of this title, in the
 18 case of an investment services partnership interest—

19 “(1) IN GENERAL.—Notwithstanding section
 20 702(b)—

21 “(A) any net income with respect to such
 22 interest for any partnership taxable year shall
 23 be treated as ordinary income for the perform-
 24 ance of services, and

1 “(B) any net loss with respect to such in-
 2 terest for such year, to the extent not dis-
 3 allowed under paragraph (2) for such year,
 4 shall be treated as an ordinary loss.

5 “(2) TREATMENT OF LOSSES.—

6 “(A) LIMITATION.—Any net loss with re-
 7 spect to such interest shall be allowed for any
 8 partnership taxable year only to the extent that
 9 such loss does not exceed the excess (if any)
 10 of—

11 “(i) the aggregate net income with re-
 12 spect to such interest for all prior partner-
 13 ship taxable years, over

14 “(ii) the aggregate net loss with re-
 15 spect to such interest not disallowed under
 16 this subparagraph for all prior partnership
 17 taxable years.

18 “(B) CARRYFORWARD.—Any net loss for
 19 any partnership taxable year which is not al-
 20 lowed by reason of subparagraph (A) shall be
 21 treated as an item of loss with respect to such
 22 partnership interest for the succeeding partner-
 23 ship taxable year.

24 “(C) BASIS ADJUSTMENT.—No adjustment
 25 to the basis of a partnership interest shall be

1 made on account of any net loss which is not
2 allowed by reason of subparagraph (A).

3 “(D) EXCEPTION FOR BASIS ATTRIB-
4 UTABLE TO PURCHASE OF A PARTNERSHIP IN-
5 TEREST.—In the case of an investment services
6 partnership interest acquired by purchase, para-
7 graph (1)(B) shall not apply to so much of any
8 net loss with respect to such interest for any
9 taxable year as does not exceed the excess of—

10 “(i) the basis of such interest imme-
11 diately after such purchase, over

12 “(ii) the aggregate net loss with re-
13 spect to such interest to which paragraph
14 (1)(B) did not apply by reason of this sub-
15 paragraph for all prior taxable years.

16 Any net loss to which paragraph (1)(B) does
17 not apply by reason of this subparagraph shall
18 not be taken into account under subparagraph
19 (A).

20 “(E) PRIOR PARTNERSHIP YEARS.—Any
21 reference in this paragraph to prior partnership
22 taxable years shall only include prior partner-
23 ship taxable years to which this section applies.

24 “(3) NET INCOME AND LOSS.—For purposes of
25 this section—

1 “(A) NET INCOME.—The term ‘net in-
 2 come’ means, with respect to any investment
 3 services partnership interest, for any partner-
 4 ship taxable year, the excess (if any) of—

5 “(i) all items of income and gain
 6 taken into account by the holder of such
 7 interest under section 702 with respect to
 8 such interest for such year, over

9 “(ii) all items of deduction and loss so
 10 taken into account.

11 “(B) NET LOSS.—The term ‘net loss’
 12 means with respect to such interest for such
 13 year, the excess (if any) of the amount de-
 14 scribed in subparagraph (A)(ii) over the amount
 15 described in subparagraph (A)(i).

16 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

17 “(1) GAIN.—Any gain on the disposition of an
 18 investment services partnership interest shall be
 19 treated as ordinary income for the performance of
 20 services.

21 “(2) LOSS.—Any loss on the disposition of an
 22 investment services partnership interest shall be
 23 treated as an ordinary loss to the extent of the ex-
 24 cess (if any) of—

1 “(A) the aggregate net income with respect
2 to such interest for all partnership taxable
3 years, over

4 “(B) the aggregate net loss with respect to
5 such interest allowed under subsection (a)(2)
6 for all partnership taxable years.

7 “(3) DISPOSITION OF PORTION OF INTEREST.—
8 In the case of any disposition of an investment serv-
9 ices partnership interest, the amount of net loss
10 which otherwise would have (but for subsection
11 (a)(2)(C)) applied to reduce the basis of such inter-
12 est shall be disregarded for purposes of this section
13 for all succeeding partnership taxable years.

14 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-
15 ERTY.—In the case of any distribution of appre-
16 ciated property by a partnership with respect to any
17 investment services partnership interest, gain shall
18 be recognized by the partnership in the same man-
19 ner as if the partnership sold such property at fair
20 market value at the time of the distribution. For
21 purposes of this paragraph, the term ‘appreciated
22 property’ means any property with respect to which
23 gain would be determined if sold as described in the
24 preceding sentence.

1 “(5) APPLICATION OF SECTION 751.—In apply-
 2 ing section 751(a), an investment services partner-
 3 ship interest shall be treated as an inventory item.

4 “(c) INVESTMENT SERVICES PARTNERSHIP INTER-
 5 EST.—For purposes of this section—

6 “(1) IN GENERAL.—The term ‘investment serv-
 7 ices partnership interest’ means any interest in a
 8 partnership which is held by any person if such per-
 9 son provides (directly or indirectly) a substantial
 10 quantity of any of the following services with respect
 11 to the assets of the partnership in the conduct of the
 12 trade or business of providing such services:

13 “(A) Advising as to the advisability of in-
 14 vesting in, purchasing, or selling any specified
 15 asset.

16 “(B) Managing, acquiring, or disposing of
 17 any specified asset.

18 “(C) Arranging financing with respect to
 19 acquiring specified assets.

20 “(D) Any activity in support of any service
 21 described in subparagraphs (A) through (C).

22 For purposes of this paragraph, the term ‘specified
 23 asset’ means securities (as defined in section
 24 475(c)(2) without regard to the last sentence there-
 25 of), real estate, commodities (as defined in section

1 475(e)(2)), or options or derivative contracts with
 2 respect to securities (as so defined), real estate, or
 3 commodities (as so defined).

4 “(2) EXCEPTION FOR CERTAIN CAPITAL INTER-
 5 ESTS.—

6 “(A) IN GENERAL.—If—

7 “(i) a portion of an investment serv-
 8 ices partnership interest is acquired on ac-
 9 count of a contribution of invested capital,
 10 and

11 “(ii) the partnership makes a reason-
 12 able allocation of partnership items be-
 13 tween the portion of the distributive share
 14 that is with respect to invested capital and
 15 the portion of such distributive share that
 16 is not with respect to invested capital,

17 then subsection (a) shall not apply to the por-
 18 tion of the distributive share that is with re-
 19 spect to invested capital. An allocation will not
 20 be treated as reasonable for purposes of this
 21 subparagraph if such allocation would result in
 22 the partnership allocating a greater portion of
 23 income to invested capital than any other part-
 24 ner not providing services would have been allo-

1 cated with respect to the same amount of in-
2 vested capital.

3 “(B) SPECIAL RULE FOR DISPOSITIONS.—

4 In any case to which subparagraph (A) applies,
5 subsection (b) shall not apply to any gain or
6 loss allocable to invested capital. The portion of
7 any gain or loss attributable to invested capital
8 is the proportion of such gain or loss which is
9 based on the distributive share of gain or loss
10 that would have been allocable to invested cap-
11 ital under subparagraph (A) if the partnership
12 sold all of its assets immediately before the dis-
13 position.

14 “(C) INVESTED CAPITAL.—For purposes

15 of this paragraph, the term ‘invested capital’
16 means, the fair market value at the time of con-
17 tribution of any money or other property con-
18 tributed to the partnership.

19 “(D) TREATMENT OF CERTAIN LOANS.—

20 “(i) PROCEEDS OF PARTNERSHIP

21 LOANS NOT TREATED AS INVESTED CAP-
22 ITAL OF SERVICE PROVIDING PARTNERS.—

23 For purposes of this paragraph, an invest-
24 ment services partnership interest shall not
25 be treated as acquired on account of a con-

1 tribution of invested capital to the extent
 2 that such capital is attributable to the pro-
 3 ceeds of any loan or other advance made or
 4 guaranteed, directly or indirectly, by any
 5 partner or the partnership.

6 “(ii) LOANS FROM NONSERVICE PRO-
 7 VIDING PARTNERS TO THE PARTNERSHIP
 8 TREATED AS INVESTED CAPITAL.—For
 9 purposes of this paragraph, any loan or
 10 other advance to the partnership made or
 11 guaranteed, directly or indirectly, by a
 12 partner not providing services to the part-
 13 nership shall be treated as invested capital
 14 of such partner and amounts of income
 15 and loss treated as allocable to invested
 16 capital shall be adjusted accordingly.

17 “(d) OTHER INCOME AND GAIN IN CONNECTION
 18 WITH INVESTMENT MANAGEMENT SERVICES.—

19 “(1) IN GENERAL.—If—

20 “(A) a person performs (directly or indi-
 21 rectly) investment management services for any
 22 entity,

23 “(B) such person holds a disqualified in-
 24 terest with respect to such entity, and

1 “(C) the value of such interest (or pay-
 2 ments thereunder) is substantially related to
 3 the amount of income or gain (whether or not
 4 realized) from the assets with respect to which
 5 the investment management services are per-
 6 formed,

7 any income or gain with respect to such interest
 8 shall be treated as ordinary income for the perform-
 9 ance of services. Rules similar to the rules of sub-
 10 section (c)(2) shall apply where such interest was ac-
 11 quired on account of invested capital in such entity.

12 “(2) DEFINITIONS.—For purposes of this sub-
 13 section—

14 “(A) DISQUALIFIED INTEREST.—The term
 15 ‘disqualified interest’ means, with respect to
 16 any entity—

17 “(i) any interest in such entity other
 18 than indebtedness,

19 “(ii) convertible or contingent debt of
 20 such entity,

21 “(iii) any option or other right to ac-
 22 quire property described in clause (i) or
 23 (ii), and

1 “(iv) any derivative instrument en-
 2 tered into (directly or indirectly) with such
 3 entity or any investor in such entity.

4 Such term shall not include a partnership inter-
 5 est and shall not include stock in a taxable cor-
 6 poration.

7 “(B) TAXABLE CORPORATION.—The term
 8 ‘taxable corporation’ means—

9 “(i) a domestic C corporation, or

10 “(ii) a foreign corporation subject to a
 11 comprehensive foreign income tax (as de-
 12 fined in section 457A(d)(4)).

13 “(C) INVESTMENT MANAGEMENT SERV-
 14 ICES.—The term ‘investment management serv-
 15 ices’ means a substantial quantity of any of the
 16 services described in subsection (c)(1) which are
 17 provided in the conduct of the trade or business
 18 of providing such services.

19 “(e) REGULATIONS.—The Secretary shall prescribe
 20 such regulations as are necessary or appropriate to carry
 21 out the purposes of this section, including regulations to—

22 “(1) prevent the avoidance of the purposes of
 23 this section, and

24 “(2) coordinate this section with the other pro-
 25 visions of this subchapter.

1 “(f) CROSS REFERENCE.—For 40 percent no fault
 2 penalty on certain underpayments due to the avoidance
 3 of this section, see section 6662.”.

4 (b) APPLICATION TO REAL ESTATE INVESTMENT
 5 TRUSTS.—Subsection (c) of section 856 of such Code is
 6 amended by adding at the end the following new para-
 7 graph:

8 “(8) EXCEPTION FROM RECHARACTERIZATION
 9 OF INCOME FROM INVESTMENT SERVICES PARTNER-
 10 SHIP INTERESTS.—

11 “(A) IN GENERAL.—Paragraphs (2), (3),
 12 and (4) shall be applied without regard to sec-
 13 tion 710 (relating to special rules for partners
 14 providing investment management services to
 15 partnership).

16 “(B) SPECIAL RULE FOR PARTNERSHIPS
 17 OWNED BY REITS.—Section 7704 shall be ap-
 18 plied without regard to section 710 in the case
 19 of a partnership which meets each of the fol-
 20 lowing requirements:

21 “(i) Such partnership is treated as
 22 publicly traded under section 7704 solely
 23 by reason of interests in such partnership
 24 being convertible into interests in a real es-

1 tate investment trust which is publicly
2 traded.

3 “(ii) 50 percent or more of the capital
4 and profits interests of such partnership
5 are owned, directly or indirectly, at all
6 times during the taxable year by such real
7 estate investment trust (determined with
8 the application of section 267(c)).

9 “(iii) Such partnership meets the re-
10 quirements of paragraphs (2), (3), and (4)
11 (applied without regard to section 710).”.

12 (c) IMPOSITION OF PENALTY ON UNDERPAY-
13 MENTS.—

14 (1) IN GENERAL.—Subsection (b) of section
15 6662 of such Code is amended by inserting after
16 paragraph (5) the following new paragraph:

17 “(6) The application of subsection (d) of section
18 710 or the regulations prescribed under section
19 710(e) to prevent the avoidance of the purposes of
20 section 710.”.

21 (2) AMOUNT OF PENALTY.—

22 (A) IN GENERAL.—Section 6662 of such
23 Code is amended by adding at the end the fol-
24 lowing new subsection:

1 “(i) INCREASE IN PENALTY IN CASE OF PROPERTY
 2 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-
 3 ICES.—In the case of any portion of an underpayment to
 4 which this section applies by reason of subsection (b)(6),
 5 subsection (a) shall be applied with respect to such portion
 6 by substituting ‘40 percent’ for ‘20 percent’.”.

7 (B) CONFORMING AMENDMENTS.—Sub-
 8 paragraph (B) of section 6662A(e)(2) of such
 9 Code is amended—

10 (i) by striking “section 6662(h)” and
 11 inserting “subsection (h) or (i) of section
 12 6662”, and

13 (ii) by striking “GROSS VALUATION
 14 MISSTATEMENT PENALTY” in the heading
 15 and inserting “CERTAIN INCREASED UN-
 16 DERPAYMENT PENALTIES”.

17 (3) REASONABLE CAUSE EXCEPTION NOT AP-
 18 PPLICABLE.—Subsection (c) of section 6664 of such
 19 Code is amended—

20 (A) by redesignating paragraphs (2) and
 21 (3) as paragraphs (3) and (4), respectively,

22 (B) by striking “paragraph (2)” in para-
 23 graph (4), as so redesignated, and inserting
 24 “paragraph (3)”, and

1 (C) by inserting after paragraph (1) the
 2 following new paragraph:

3 “(2) EXCEPTION.—Paragraph (1) shall not
 4 apply to any portion of an underpayment to which
 5 this section applies by reason of subsection (b)(6).”.

6 (d) CONFORMING AMENDMENTS.—

7 (1) Subsection (d) of section 731 of such Code
 8 is amended by inserting “section 710(b)(4) (relating
 9 to distributions of partnership property),” before
 10 “section 736”.

11 (2) Section 741 of such Code is amended by in-
 12 serting “or section 710 (relating to special rules for
 13 partners providing investment management services
 14 to partnership)” before the period at the end.

15 (3) Paragraph (13) of section 1402(a) of such
 16 Code is amended—

17 (A) by striking “other than guaranteed”
 18 and inserting “other than—

19 “(A) guaranteed”,

20 (B) by striking the semi-colon at the end
 21 and inserting “, and”, and

22 (C) by adding at the end the following new
 23 subparagraph:

24 “(B) any income treated as ordinary in-
 25 come under section 710 received by an indi-

1 vidual who provides investment management
2 services (as defined in section 710(d)(2));”.

3 (4) Paragraph (12) of section 211(a) of the So-
4 cial Security Act is amended—

5 (A) by striking “other than guaranteed”
6 and inserting “other than—

7 “(A) guaranteed”,

8 (B) by striking the semi-colon at the end
9 and inserting “, and”, and

10 (C) by adding at the end the following new
11 subparagraph:

12 “(B) any income treated as ordinary in-
13 come under section 710 of the Internal Revenue
14 Code of 1986 received by an individual who
15 provides investment management services (as
16 defined in section 710(d)(2) of such Code);”.

17 (5) The table of sections for part I of sub-
18 chapter K of chapter 1 of such Code is amended by
19 adding at the end the following new item:

“Sec. 710. Special rules for partners providing investment management services
to partnership.”.

20 (e) EFFECTIVE DATE.—

21 (1) IN GENERAL.—Except as otherwise pro-
22 vided in this subsection, the amendments made by
23 this section shall apply to taxable years ending after
24 the date of enactment of this Act.

1 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
2 CLUE EFFECTIVE DATE.—In applying section
3 710(a) of the Internal Revenue Code of 1986 (as
4 added by this section) in the case of any partnership
5 taxable year which includes the date of enactment of
6 this Act, the amount of the net income referred to
7 in such section shall be treated as being the lesser
8 of the net income for the entire partnership taxable
9 year or the net income determined by only taking
10 into account items attributable to the portion of the
11 partnership taxable year which is after such date.

12 (3) DISPOSITIONS OF PARTNERSHIP INTER-
13 ESTS.—Section 710(b) of the Internal Revenue Code
14 of 1986 (as added by this section) shall apply to dis-
15 positions and distributions after the date of enact-
16 ment of this Act.

17 (4) OTHER INCOME AND GAIN IN CONNECTION
18 WITH INVESTMENT MANAGEMENT SERVICES.—Sec-
19 tion 710(d) of such Code (as added by this section)
20 shall take effect on the date of enactment of this
21 Act.

22 (5) PUBLICLY TRADED PARTNERSHIPS.—For
23 purposes of applying section 7704, the amendments

- 1 made by this section shall apply to taxable years be-
- 2 ginning after December 31, 2009.

